IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

RP.No. 289 of 2005(Y)

AGAINST THE JUDGEMENT/ORDER IN OP.13433/1997
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PETITIONER/PETITIONER

T.K.SHAHUL HASSAN MUSSALIAR,
S/O.THANGAL HUNJU MUSALIAR,
BELAIRE, KILIKOLLOOR, KOLLAM.

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENTS: RESPONDENTS
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1. THE STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, KOLLAM.

3. THE TAHSILDAR,
PATHANAPURAM, KOLLAM DISTRICT.

4. POWER GRIND CORPORATION OF INDIA LTD.,
CONSTRUCTION AREA OFFICE,
PONGUMOODU, THIRUVANANTHAPURAM-11,
REP. BY ITS DEPUTY MANAGER.

BY GOVERNMENT PLEADER
AVS. SRI.K.P.DANDAPANI FOR R4
SRI.P.RAMASWAMY PILLAI (ADV. COMMISSIONER)
DR.S.CHAND BASHA (ADV. COMMISSIONER)

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 06/12/2007 ALONG WITH OP NO. 13433 OF 1997 AND RP NO. 1115 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S.RADHAKRISHNAN & M.N.KRISHNAN, JJ

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RP Nos.289/2005, 1115/2006
& O.P.No.13433/1997

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Dated this the 6th day of December 2007

REVISED JUDGMENT

Krishnan, J.

O.P.No.13433 of 1997 is filed to quash Ext.P6 notice by a writ of certiorari and to declare that respondents have no manner of right to resume 94 acres of land in Sy.No.745/1 of Thingal Karikkakam Village, 3.32 acres in Sy.No.86/1 of Chithara Village from the possession of the petitioner and direct respondents to reconvey the land which he assumed possession and other reliefs.

2. The brief facts are that the land mentioned in Sy.No.745/1 having an extent of 94 acres and 3.32 acres in Sy.No. 86/1 was leased to the father of the petitioner, viz., Sri.Thangal Kunju Musaliyar way back in 1947 for a period of 99 years. The petitioner's father continued his possession and enjoyment till his death in 1966. He had effected valuable improvements and had converted the land into a rubber plantation in 1962-63. After his death, the writ petitioner is in possession and enjoyment of the land. The

Taluk Land Board initiated a case against the petitioner and found that since the land is a rubber estate planted with rubber prior to 1.4.1964 exempted the land and the civil revision petition as well as the special leave petition filed by the State had been dismissed. In 1996, some people of the locality attempted to take forcible possession and the petitioner moved O.P.No.18948/1996 for police protection. In the year 1995, the Irrigation Department of the State of Kerala proposed a Scheme for re-settlement of 75 Kani families evicted from Vamanapuram Irrigation Project Area. At the conference, which was presided over by the Minister there was a decision to take the lands by paying value of improvements. The Tahsildar, Pathanapuram valued the properties. 6.44 acres of land was valued at Rs.25,76,000/- and the 5 buildings were valued at Rs.9,38,792/-. For 94 acres of land in Sy.No.745/1 the compensation for value of improvements was valued at the rate of Rs.2,000/-, totalling Rs. 1,70,94,000/-. The compensation fixed is inadequate. 94 acres plus 3.32 acres in Sy.No.86/1 are lying contiguously and leased out to the petitioner's father Thangalkunju Musaliar for a period of 99 years. In 1947, it was cultivated with cashew plants. In 1948, all the trees standing in the property were cut and removed by the forest department and therefore the trees which belong to the Government had been cut and removed by the department at that

point of time. The Kuthakapattom Rules, 1935 is framed in exercise of the power vested in the Government under Section 7 of the Government Land Assignment Regulation 111 of 1097. It is submitted that in the light of the aforesaid enactments the lease of 99 years enure to the lessee's heirs. Therefore the petitioner is a lessee for all the purposes and some proceedings under the provisions of the Land Conservancy Act cannot put an end to the Kuthakapattom lease and any order passed therein is without hearing the petitioner. Therefore the petitioner contends that he is entitled to the relief as prayed for.

3. The 2nd respondent has filed a counter affidavit raising the contention that the writ petitioner is not entitled to any reliefs. 94 acres of land was given on kuthakapattom for cashew cultivation to Sri.A.Thangalkunju Musaliar. The cashew trees planted originally in the land were cut and the area was re-planted with rubber during the period between 1966 and 1968. The kuthakapattom was never renewed and as the conversion of the cashew plantation into rubber estate was clearly in violation of kuthakapattom conditions, the lease stands automatically terminated. The Land Conservancy Case No.35 of 1971 was initiated and a fine of Rs.25/- was imposed on the petitioner. The petitioner filed L.C.Appeal No.2222/73, which was dismissed against which a revision was

filed before the Board of Revenue and it appears that the Board of Revenue stayed the eviction proceedings. Subsequently, the Board directed him to file a revision before the District Collector. The revision petition was dismissed on 26.2.1974. Thereafter the petitioner has approached the Government and obtained a stay in 1974 which is vacated in 1989.

4. The contention that there is no encroachment and that he is eligible for getting the land assigned in his favour is incorrect. Thereafter the petitioner submitted another representation on 20.7.1991 before the Revenue Minister. The Government and the Law Department objected to move for assignment. It is contended that the petitioner herein is not entitled to any relief and the writ petition is liable to be dismissed.

5. This court by judgment dated 28.1.2005 held that the question of resumption of land does not arise since land has already been resumed and distributed to the landless persons. Under such circumstances, the writ petition was disposed of with a direction to the first respondent to pass appropriate orders on the question of value of improvements after taking note of the report of the Tahsildar within a period of six months from the date of receipt of a copy of the judgment. Against that judgment, the petitioner moved R.P.No.289 of 2005 for review of the judgment contending that the judgment requires review on the ground that no final

orders are passed nor any hearing done in the land conservancy case. The land was forcibly taken possession pursuant to Ext.P6 dated 1.8.1997. This court had passed an order directing the Government not to assign the land and therefore the land is not distributed but is in possession of the Government. Similarly, the land involved is not 94 acres in Sy.No.745/1 but 97.32 acres in Sy.Nos.745/1 and 86/1. The court has also omitted to enter into a finding regarding the petitioner's entitlement to the value of improvements. Therefore the petitioner prayed for review of the judgment.

6. The Government also has moved a review petition, R.P.No.1115 of 2006 praying for the review of the judgment on the ground that this Court has not considered the legal question whether an encroacher is entitled to claim improvements in a property belonging to the Government which was resumed on 4.8.1997 for violating kuthakapattom rules. The Court has not considered the decision reported in ***K.C.Alexander v. State of Kerala (AIR 1973 SC 2498)*** to the effect that a person who is an unauthorised occupier of the Government land is not entitled to claim compensation for the trees that he planted there. It is also prayed that the order regarding entitlement of compensation requires review as the petitioner is not entitled to any compensation.

7. As per the direction of this Court, Commissioners were appointed

to visit the property and submit their reports regarding the value of improvements. Sri.P.Ramaswamy Pillai, Retired Deputy Chief Engineer (Civil) inspected the property and submitted a report regarding the value of improvements of the structures. There was a barbed wire fencing which the Commissioner found at a length of 3364 metres. He had calculated the cost of materials, labour charges, posts required, etc. and had arrived at a decision that the cost of the barbed wire fencing comes to Rs.1,46,457/-. The Commissioner also reported about a check dam which had a top length of 21.5 metres and a width of 1.65 metres at the top. After assessing the value and reducing the depreciation, the Commissioner fixed the value at Rs.29,176/-. The Commissioner also calculated the value of the bridge, only the remnants of which were in existence and calculated the value at Rs.34886/- and after depreciation and estimation of other materials fixed the rate at Rs.32,176/-. Then the Commissioner noted the estimated expenditure for the road system having a total length of 160 metres and arrived at a value of Rs.40,960/-. The Commissioner also took note of the cost of land, development and other improvements and fixed it at Rs.16,000/-. He had given the abstract of valuation at page 11 of the report.

8. So far as the value of trees, etc. are concerned, the Commissioner was Dr.S.Chand Basha, IFS, retired Principal Chief Conservator of Forests.

He had estimated the number of rubber trees in table I as 11427 and other trees 482, thus totalling 11909. He had grouped the trees depending upon the girth as Class 1 to Class to 5 and he had also given the total number of trees and thereafter had calculated the value. He had estimated the values to arrive at a total value which is given in the report. As per table 21, the total value of tree growth is estimated at Rs. 1,21,68,157.53 and the total value of miscellaneous tree growth is taken as 11,11,414.35, thus totalling at Rs.1,32,79,571.88.

9.It is contended by the petitioner that as he is in possession of the land as the legal heir of his father and as the lease has not been terminated, he is entitled to get back the lands. Ext.P1 is the order of this Court in C.R.P.No.2180 of 1978, whereby the revision filed against the Taluk Land Board's order by the State was dismissed. It was found that the land is converted into rubber plantation prior to 1.4.1964. This was affirmed by the Apex Court. This will indicate that the Taluk Land Board had considered this land as belonging to the petitioner and registered a ceiling case against him and others. Ext.P3 is the Minutes of the Conference held on 1.3.1996. Paragraph 7 of the Minutes deals with the acquisition of private land required for the 75 kani families. Paragraph 8 deals with the land occupied by the writ petitioner. Though the possession of the petitioner is

described as unauthorised, it was decided to resume the land after paying the value of improvements, if any, to the 95 acres and payment of land value and improvements for the balance registered land. The Tahsildar, Pathanapuram was directed to take urgent steps for detailed valuation of the improvements in this 95 acres urgently. Accordingly as per Ext.P4 report, the Tahsildar estimated the value of this land at Rs.1,70,94,000/-. By Ext.P5, the Tahsildar, Pathanapuram endorses this report as acceptable. It is stated therein that kuthakapattom land comes to 85 acres 47 cents and can be valued at Rs.1,70,94,000/-. So the decision of the Government at its meeting held on 1.3.1996 shows that the value of improvements has to be granted.

10. The Government, on the other hand, would contend that the land conservancy proceedings had been initiated and his application for assignment rejected. This, according to the Government would show that he is not entitled to any right. Though so many numbers are referred to in the counter, no document is forthcoming to show that what was really dealt with by the Government in those proceedings. The father of the petitioner admittedly is a lessee of the property. He died in 1966. The petitioner had succeeded to his leasehold right as the legal heir. There is nothing to show that the lease had been terminated. The lease is for 99 years. If the land

conservancy proceedings are initiated for cutting of trees, it has to be stated that whatever trees were there which belonged to the Government had been cut and removed in 1948. It was the Forest Department which had cut and removed the same. Rubber plantations were made during the year 1962-63 and the father died in the year 1966. No action whatsoever had been initiated during his life time. Even after the land conservancy proceedings, ceiling case has been initiated and the Taluk Land Board exempted the land holding it as a rubber estate. The Government preferred revision and later special leave petition before the Supreme Court, which ended in dismissal. There is no case at that point of time that the petitioner did not have any right. On 1.3.1996, the Government decided to give the value of improvements even. Therefore the conduct of the authorities convincingly establish their recognition of the petitioner's right. When a lease is granted, it has to be cancelled by fulfilling the essential conditions for the same. It has not been done in this case. Therefore the decisions referred to by the Government on the review petition may not come to their rescue in view of their conduct. So the totally different stand taken by the Government in contradiction to their earlier stand cannot be accepted. The petitioner's father and thereafter the petitioner had been in possession of the property as lessees and there has has been no legal termination of the lease by

resorting to the proceedings.

11.So far as the contention of the petitioner that he is entitled to get back the lands cannot be accepted. The Government requires the land for public purpose, i.e. for resettlement of 75 kani families. It is the Government land that they want to get back. It cannot be blocked by the petitioner. Therefore the contention that he is entitled to get back the land cannot be accepted. So, from these discussions, we hold that the petitioner is not entitled to get back the lands, but he is entitled to the value of improvements.

12.The next question is what is the value of improvements he is entitled to. As discussed earlier, the Officer of the Government, i.e. the Tahsildar has suggested Rs.1,70,94,000/-. We directed the Government earlier to consider the question on the basis of the same. The Government was not willing and they took a stand that the petitioner is not entitled to compensation. Thereafter we heard both sides and appointed two Commissioners Sri.P.Ramaswamy Pillai, and Dr.S. Chand Basha.They were selected from the panel given by both sides after hearing both sides. Sri.P.Ramaswamy Pillai is a retired Deputy Chief Engineer(Civil) and Dr.S.Chand Basha is a retired Principal Chief Conservator of Forests. Both of them visited the properties with notice to all concerned and had

submitted their reports with a scientific approach. How they had arrived at the value is clearly stated in the report. Nothing is produced by either side to show how those reports are incorrect. There is nothing to show that they had any special interest in any of the parties and both are competent in their respective fields. Therefore we accept the reports and fix the value of improvements accordingly. Both the Commissioners had elaborately considered the entire matter in the correct perspective.Therefore, from the above discussions, we hold that the petitioner is not entitled to get back the lands but he is entitled to the value of improvements.

In the result, the review petitions and the original petition are disposed of as follows: (1) We find that the petitioner is not entitled to get back the property from the Government, (2) We hold that the petitioner is entitled to the value of improvements of Rs.1,34,44,340/-(rupees one crore, thirty four lakhs, forty four thousand, three hundred and forty only) and that the Government is directed to pay the same, (3) It is also held that the Government shall not distribute the land without making the payment for the value of improvements and (4) We direct the Government to pay the amount within 3 months from today, failing which the petitioner will be entitled to 6% interest on the said sum from the date of default(i.e. after

the period of 3 months).

K.S.RADHAKRISHNAN, JUDGE

M.N.KRISHNAN, JUDGE

Cdp/-